THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.24164 of 2005

Dated 25th November 2005

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Between:

S.R.K.Lakshmi Narasimha Raju & others

…Petitioners

and

The Assistant Divisional Engineer,

(Construction and Operation),

A.P.Eastern Power Distribution Co.Ltd.

…Respondent

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.24164 OF 2005

O R D E R:

The petitioners state that they are the owners of agricultural lands in Binepalli village of Nidamarru Mandal, West Godavari District, in various survey numbers. They state that they have been extended the power supply by the respondent, in the year 1997, for domestic, as well as agricultural purposes. They challenge the action of the respondent, in disconnecting the power supply and intimating the same through letter, dated 27.10.2005.

The petitioners contend that on an earlier occasion, the power supply was disconnected, without following the procedure, and when the same was challenged in W.P.No.15518 of 2004, this Court granted the relief, making it very clear that in

case, the respondent intends to proceed further, he shall be under obligation to supply the copy of the proceedings of the District Collector, West Godavari, dated 8.8.1999. They contend that without complying with the same, a notice was issued on 2.10.2004, and despite the request made by the petitioners to supply the copy of the proceedings of the District Collector, dated 8.8.1999, it was not supplied and the disconnection was effected, after about one year.

In the counter affidavit filed by the respondent, it is stated that after W.P.No.15518 of 2004 filed by the petitioners was disposed of by this Court, a fresh notice, dated 2.10.2004, was issued, on the basis of the G.O.Ms.No.120, dated 4.10.1999, and the proceedings of the Divisional Forest Officer issued in September 2004. It is alleged that copies of the same were furnished, and the petitioners were specifically required to submit their objections with reference to the said proceedings. Respondent states that except insisting on furnishing of the copy of the proceedings of the District Collector, dated 8.8.1999, the petitioners did not respond to the notice, dated 2.10.2004. It is stated that the area is part of Wild Life Sanctuary, declared under the Wild Life (Protection) Act, 1972, for short “the Act”, and the measures were taken, in accordance with the G.O.Ms.No.120, dated 4.10.1999, which was upheld by this Court.

Sri C.Ramachandra Raju, learned counsel for the petitioners, submits that when there was a clear direction to the respondent by this Court in W.P.No.15518 of 2004, to furnish a copy of the proceedings of the District Collector, dated 8.8.1999, there was absolutely no justification for him, in disconnecting the power supply, without complying with it. He contends that the lands of the petitioners do not fall in the +5’ Contour, indicated in G.O.Ms.No.120.

Learned Standing Counsel for the respondent, on the other hand, submits that the village Binepalli was included in G.O.Ms.No.120 and that it is part of the Wild Life Sanctuary. He contends that it was always open to the petitioners, to satisfy that their lands are not within +5’ Contour, and the petitioners have to blame themselves for the present action.

The petitioners were extended the power supply in the year 1997, for domestic as well as agricultural purposes. G.O.Ms.No.120 was issued by the Government of Andhra Pradesh, in exercise of powers conferred under Section 26-A of the Act. The object was to create Wild Life Sanctuary for Kolleru Lake, covering several villages in Mandavalli and Kaikaluru mandals of Krishna District, and Eluru, Nidamarru and Akiveedu Mandals of West Godavari District. Binepalli is included in the Wild Life Sanctuary. One of the measures indicated therein is that electricity connection shall be given only for domestic purpose, and not for agricultural, or other activities. The power supply to the petitioners for their agricultural pump sets was disconnected on an earlier occasion, on the basis of proceedings dated 8.8.1999, issued by the District Collector. W.P.No.15518 of 2004, filed by the petitioners challenging the orders of disconnection, was allowed on the sole ground that the copy of the proceedings of the District Collector was not supplied to them. It was left open to the respondent, to take further steps, after making the said proceedings available.

Had the respondent proceeded on the basis of the proceedings of the District Collector, without supplying a copy of the same, the present action could certainly have been found fault with. In his notice, dated 2.10.2004, the respondent mainly relied upon G.O.Ms.No.120, published in the District Gazette, dated 11.11.1999, and the proceedings of the Divisional Forest officer issued in September 2004. Reference was also made to the orders of this Court in W.P.No.15518 of 2004, and the proceedings of the District Collector, dated 8.8.1999. However, in the notice, the petitioners were clearly required to offer their comments to the proceedings of the Divisional Forest Officer and G.O.Ms.No.120. This suggests that the respondent did not intend to base his action on the proceedings of the District Collector, dated 8.8.1999.

When the petitioners were specifically required to offer their comments on the G.O.Ms.No.120, as well as the proceedings of the Divisional Forest Officer, they were under obligation to submit their explanation, or offer comments. Instead, they made a representation, dated 8.10.2004, requesting the respondent to furnish a copy

of the proceedings of the District Collector. In this background, it cannot be said that the petitioners were not given any opportunity, before the action was taken.

It is not as if the proceedings of the District Collector, dated 8.8.1999, are the result of any adjudication. The whole basis for initiating the steps for disconnecting the power supply was the creation of a Wild Life Sanctuary. That was done through G.O.Ms.No.120. The only question that becomes relevant in the entire episode is, as to whether the lands of the petitioners are within +5' Contour. It was always open to the petitioners, to prove and demonstrate that their lands are outside the said Contour. Before this Court also, the petitioners did not place any material to prove their claim, in this regard. Therefore, this Court is not inclined to direct the respondent, to restore the power supply to the petitioners, straight away. Even now, the petitioners can establish their claim, and if they are successful in this regard, they shall be entitled for restoration of power supply.

For the foregoing reasons, the writ petition is disposed of, directing that it shall be open to the petitioners to submit their explanation, or representation, in support of their plea that their lands are outside the +5' Contour, and not part of the Wild Life Sanctuary, and the respondent shall pass appropriate orders thereon, within one week from the date of receipt of such representation. In case, the petitioners are able to prove that their lands are outside the said Contour, power supply shall be restored to them, forthwith. There shall be no order as to costs.

25th November 2005

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